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OFFICE OF PETITIONS

In re Application of :
Page et al. :
Application No. 10/090,379 : ON PETITION
Filed: 4 March, 2002 :
Attorney Docket No. :
60027.0309US01/BS01384 :

This is a decision on the petition to withdraw the holding of abandonment, filed on 21 September, 2006, which is treated as a petition under 37 CFR 1.181.

This application became abandoned on 17 March, 2006, for failure to timely submit a reply to the non-final Office action mailed on 16 December, 2004, which set a three (3) month shortened statutory period for reply. Notice of Abandonment was mailed on 25 August, 2006.

In the present petition, petitioners request that the Office withdraw the holding of abandonment due to non-receipt of the Office action mailed on 16 December, 2004.

A review of the record indicates no irregularity in the mailing of the Office action mailed on 16 December, 2004, and in the absence of any irregularity in the mailing, there is a strong presumption that the Office action was properly mailed to the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office

communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Petitioners have supplied a copy of a docket report along with a statement by the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. The docket report is referenced in the practitioner's statement.

It is also noted that although a revocation and new power of attorney and change of correspondence address listing the current correspondence address was filed on 9 May, 2003, the non-final Office action mailed on 16 December, 2004, was mailed to Notice of Allowance and Fee(s) Due was mailed to Christopher L. Bernard, Esq., Kilpatrick Stockton LLP, One Wachovia Center, Suite 3500, 301 S. College Street, Charlotte, NC 28202. The revocation and power of attorney and change of correspondence address were entered on 10 March, 2005. As such, the showing of record is that although a change of correspondence address was filed, the Office action was subsequently mailed to the old correspondence address.

The petitioner has made a sufficient showing of nonreceipt of the Office action mailed on 16 December, 2004. As such, there is no abandonment in fact. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

As such, the holding of abandonment is **withdrawn**. The application is restored to pending status.

The petition is **GRANTED**.

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The application file is being referred to the Technology Center Technical Support Staff for remailing of the non-final Office action mailed on 16 December, 2004. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions